

# MAINE STATE LEGISLATURE

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LAWS  
OF THE  
STATE OF MAINE  
AS PASSED BY THE  
One Hundred and Sixth Legislature  
1ST SPECIAL SESSION  
JANUARY 2, 1974 TO MARCH 29, 1974  
AND BY THE  
One Hundred and Seventh Legislature  
REGULAR SESSION  
JANUARY 1, 1975 TO JULY 2, 1975

PUBLISHED BY THE DIRECTOR OF LEGISLATIVE RESEARCH IN  
ACCORDANCE WITH THE REVISED STATUTES OF 1964, TITLE 3,  
SECTION 164, SUBSECTION 6.

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THE KNOWLTON AND MCLEARY COMPANY  
FARMINGTON, MAINE  
1975

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PUBLIC LAWS  
OF THE  
STATE OF MAINE

AS PASSED BY THE  
One Hundred and Seventh Legislature

1975

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## CHAPTER 541

### AN ACT to Require Ferries Operating in Casco Bay to be Equipped with Radar Devices.

*Be it enacted by the People of the State of Maine, as follows:*

35 MRSA c. 267 is enacted to read:

#### CHAPTER 267

#### RADAR DEVICES ON FERRIES

##### § 3321. Radar requirements on vessels operating in Casco Bay

Every person, firm or corporation subject to the regulations of the Public Utilities Commission in conjunction with the transport of 6 or more passengers by vessel, for compensation, between or among the islands of Casco Bay and the mainland shall, after appropriate action by the Public Utilities Commission acting pursuant to section 3322, provide an operable radar device on each vessel operated by such person or corporation which carries 6 or more passengers and shall provide a person qualified to operate said radar device in accordance with all federal rules and regulations relating to the operation of federally licensed passenger carrying vessels.

##### § 3322. Standards; promulgation; enforcement; penalty

The Public Utilities Commission shall adopt, within 30 days following the effective date of this Act, rules and regulations relating to the use and installation of radar devices in the vessels referred to in section 3321. These rules and regulations shall include, but need not be limited to, the specification of standards for the radar devices to be carried by the vessels referred to in section 3321 and the qualifications of those persons responsible for the proper operation of said radar devices.

The commission, subsequent to the promulgation of those standards, shall allow a reasonable time for initial compliance, which time shall not exceed 180 days.

The Public Utilities Commission may enforce the provisions of section 3321 and this section or any of the rules and regulations promulgated thereunder in the same manner and with the same effect as it is permitted to enforce chapters 1 to 17.

The certificate of authority of any person, firm or corporation not complying with the commission's order may be revoked.

Effective October 1, 1975

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## CHAPTER 542

### AN ACT to Provide for the Maintenance of Neglected Dams and Existing Water Levels in Lakes Impounded by Dams.

*Be it enacted by the People of the State of Maine, as follows:*

12 MRSA c. 6 is enacted to read:

## CHAPTER 6

### NEGLECTED DAMS

#### § 301. Legislative findings

The Legislature recognizes that the Colonial Ordinance of 1641, which is a part of the common law of Maine, established the principle that great ponds, including artificial ponds of 30 or more acres, are held by the State in trust for the people; and the Legislature declares that it is desirable for littoral proprietors and the public to have water levels in bodies of water impounded by dams maintained at levels at which such bodies have been traditionally maintained. This public policy includes the maintenance of water levels to provide navigation on such body of water in the customary fashion, to maintain customary habitat for fish and wildlife, to prevent the exposure of unsightly shorelines and to provide for access to the water in the customary fashion, to prevent erosion of shorelines from severely fluctuating lake levels, and to provide and maintain other rights to which such littoral proprietors and the public have through the passage of time become entitled.

#### § 302. Definitions

As used in this chapter, unless the context indicates otherwise, the following words shall have the following meanings.

1. **Commission.** "Commission" means the Soil and Water Conservation Commission.

2. **Dam.** "Dam" means any artificial barrier of any kind whatsoever which impounds or diverts water, and which:

**A.** Is 2 feet or more in height in the natural bed of the stream or watercourse in which it is constructed measured at the downstream toe of the barrier, or from the lowest elevation from the outside limit of the barrier, if it is not across a stream, channel or watercourse, to the maximum capable water storage elevation, or is located at the outlet of a great pond as defined in Title 38, section 422.

3. **Person.** "Person" means any individual, firm, association, partnership, corporation, trust, municipality, quasi-municipal corporation, state agency, federal agency or other legal entity.

#### § 303. Registration of ownership

Any person, other than State and Federal Governments, owning or operating any dam shall annually register with the commission, on forms provided by the commission, on or before the first day of January of each calendar year. Such registration shall require that the owner or operator provide to the commission such information as may be reasonably required by it to perform the duties required by this Act. The annual fee for such registration shall be \$10. Said fee to be used by the commission for administration of the Act. Any dam not registered pursuant to this section shall be deemed abandoned under chapter 5.

The owner of any dam shall provide written notice to the commission 90 days prior to:

1. Transfer of ownership. Any transfer of ownership of such dam whether by sale, lease or gift;
2. Breach or destroy a dam. Any Act by him or at his direction to breach or destroy a dam, in whole or in part; or
3. Alteration or discontinuation. The alteration or discontinuation of any useful or beneficial purpose for which such dam has theretofor been maintained.

§ 304. Establishment of water levels

1. Power. The commission may upon its own motion and shall upon receipt of petitions from 10% of the littoral proprietors on any body of water impounded by a dam conduct a public hearing for the purpose of establishing a normal water level for such body of water. This section shall not apply to any dam operated or maintained for the beneficial use of the owner or an operator or other downstream littoral proprietor. Such beneficial uses shall include but not be limited to the generation of hydro-electric power, the maintenance of public or private water supplies, the maintenance of commercial transportation, the dilution of wastewater or sewage discharges or any other similar use economically beneficial to the owner or operator or other downstream littoral proprietor.

2. Notice. The commission shall provide public notice of its intent to hold such hearing by providing written notice to the owner, if known, of any dam on such body of water and to any petitioner who has petitioned for a hearing with respect to such body of water. Such written notice shall be made by registered mail and shall identify the time and place of the hearing and the purpose for which it shall be conducted. Such notice shall be provided to the owners and petitioners at least 60 days prior to such hearing. In addition, to the foregoing, the commission shall give notice of its intent to hold such hearing by filing written notice of the same in the municipal office of any municipality in which such body of water may be located and by publication at least 5 times in a newspaper of general circulation within the county or counties in which the body of water is located, the date of first publication to be not less than 60 days and the date of the last publication to be not less than 15 days prior to such hearing.

3. Evidence. At such hearing the commission shall solicit and receive testimony for the purpose of establishing a normal water level for such body of water, including but not limited to:

- A. The water level necessary to maintain traditional navigation and boating;
- B. A water level necessary for the maintenance of fish and wildlife habitat;
- C. The water level necessary for the prevention of exposing unsightly shores;
- D. The water level necessary to prevent the erosion of shorelines;
- E. The water level necessary to provide customary access to the water by littoral proprietors and the public;

F. The water level necessary to accommodate precipitation and runoff of waters ;

G. The water level necessary to prevent creation of a hazardous condition to littoral proprietors and the public ; and

H. The historical fluctuations in water levels and the affect of such fluctuations on littoral proprietors and the uses of such body of water.

4. Order. Based on the evidence solicited at such hearing the commission shall, within 60 days after adjournment, make written findings and issue an order to the owner of any dam thereon establishing a normal water level for the body of water impounded by such dam. Such order shall, insofar as practicable, require the maintenance of a stable water level, but shall include provision for variations in water level to permit sufficient draw down of such body of water to accommodate precipitation and runoff of surface waters and to otherwise permit seasonal or other necessary fluctuations in water level of such body of water in order to protect littoral proprietors and public health, safety and welfare. The commission shall cause a copy of such order to be delivered to the dam owner and each petitioner, if any, and shall cause the same to be filed in the appropriate registry of deeds.

#### § 305. Maintenance of dams

1. Prohibition. After issuance of an order under section 304, subsection 4 establishing a normal water level for any body of water, no owner of a dam thereon, nor any subsequent transferee, shall operate or maintain such dam or cause or permit such dam to be operated or maintained in any manner that will cause such level of water to be higher or lower than that permitted by the order of the commission.

2. Exception. No owner shall be deemed to have violated subsection 1 where such violation was caused by unforeseeable and unpredictable meteorological conditions and such owner could not have avoided such violations by promptly undertaking all reasonably available steps to regulate water flow through or over any dam under his control. The burden of proof shall be on the owner of the dam to demonstrate the applicability of this subsection.

3. Applicability. Section 304 and subsection 1 of this section shall not apply to any dam operated or maintained for the beneficial use of the owner or an operator or other downstream littoral proprietor. Such beneficial uses shall include but not be limited to the generation of hydro-electric power, the maintenance of public or private water supplies, the maintenance of commercial transportation, the dilution of wastewater or sewage discharges or any other similar use economically beneficial to the owner or operator or other downstream littoral proprietor. In the event that such beneficial uses are discontinued, the owner of such dam shall be subject to the requirements of section 304 and subsection 1 of this section. Further, the provisions of this chapter shall not apply to any dam where the dam owner is also the sole littoral owner on the impounded body of water and the impounded body of water is not a great pond as defined in Title 38, section 422.

4. Transfer. Any owner of a dam who transfers the title to such dam and the rights relating to such dam to a municipality or to a nonprofit corporation organized under Title 13, chapter 81, shall be relieved of all obligations under this section.

§ 306. Enforcement

The commission, a dam owner, or any littoral proprietor may commence an action to enjoin the violation of any provision of this chapter.

The violation of any order of the commission shall be punishable by a fine of not less than \$20 and not more than \$100. Each day of violation shall be considered a separate offense.

§ 307. Appeal

Any person aggrieved by an order of the commission may appeal to the Superior Court within 30 days of notice thereof.

§ 308. Miscellaneous

Nothing in this chapter shall be construed as relieving any person from duties, responsibilities or liabilities imposed by any other statute, regulation, municipal ordinance or any rule of law.

No action shall be brought against the State, the commission or its agents or employees for the recovery of damages caused by any order of the commission.

No provision of this Act shall be construed as limiting the powers of the Bureau of Civil Emergency Preparedness under Title 37-A, Sections 180 to 186.

Effective October 1, 1975

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## CHAPTER 543

### AN ACT to Provide for the Detention of Shoplifters.

*Be it enacted by the People of the State of Maine, as follows:*

17 MRSA c. 114 is enacted to read:

#### CHAPTER 114

#### DENTENTION OF SHOPLIFTERS

§ 3521. Detention of shoplifters

A store owner, manager or supervisor may detain on the premises in a reasonable manner and for a period of time not to exceed ½ hour any person he has probable cause to believe is unlawfully concealing merchandise. The purposes of such detention shall be: To require the person being detained to identify himself; to verify such identification; to inform a law enforcement officer of the detention and to surrender such person to said officer; and when the detained person is a minor, to inform a law enforcement officer or the parents or guardian of said minor of the detention and to surrender him to the person so informed.